## CCRB INVESTIGATIVE RECOMMENDATION

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Investigator:		Team:	CCRB Case #:	✓ Forc	e <b></b> ✓	=	☐ U.S.
Laura Strauss		Squad #5	202003025	☑ Abus	se 🔽	O.L.	☑ Injury
Incident Date(s)		Location of Incident:	•	Precin	ct: 1	8 Mo. SOL	EO SOL
Wednesday, 04/22/2020 11:49 PM		In front of § 87(2)(b) § 87(2)	2)(b)	75	1	0/22/2021	5/4/2022
Date/Time CV Reported		CV Reported At:	How CV Reported:	: Date/	Time Re	ceived at CC	RB
Thu, 04/23/2020 12:08 AM		IAB	Phone	Mon,	05/04/20	020 11:09 Al	М
Complainant/Victim	Type	Home Addre	ess				
Subject Officer(s)	Shield	TaxID	Command				
1. An officer			075 PCT				
2. PO Marc Whirl	09207	937726	075 PCT				
3. POM Kevin Morgan	07698	949365	075 PCT				
4. POM Phillip Bilmes	20096	958309	075 PCT				
Officer(s)	Allegatio	on			Investi	gator Recor	nmendation
A.PO Marc Whirl		guage: Police Officer M					
	§ 87(2)(b) of § 87(2)(b)		perceived sexual orie	entation			
B.PO Marc Whirl	Discourte to § 87(2)(b)	esy: Police Officer Marc	c Whirl spoke discou	ırteously			
C.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks						
D.POM Kevin Morgan	to \$87(2)(b) based upon the gender of \$87(2)(b)  Off. Language: Police Officer Kevin Morgan made remarks						
	to § 87(2)(b)						
E.POM Kevin Morgan	Abuse: P	olice Officer Kevin Moz with the use of force.	rgan threatened § 87(2)	(b)			
F.POM Kevin Morgan	Off. Lang	guage: Police Officer Ke	evin Morgan made role perceived sexual	emarks			
	orientatio	on of § 87(2)(b)	•				
G.POM Kevin Morgan	Discourte discourte	esy: Police Officer Kevi cously to <sup>§ 87(2)(b)</sup>	in Morgan spoke				
H.PO Marc Whirl	Off. Language: Police Officer Marc Whirl made remarks to based upon the perceived sexual orientation of \$87(2)(b)						
I.PO Marc Whirl	Discourte to § 87(2)(b)	esy: Police Officer Marc	c Whirl spoke discou	ırteously			
J. An officer	Off. Lang	guage: An officer made on race.	remarks to § 87(2)(b)				
K.POM Kevin Morgan		Police Officer Kevin Months Sumber to § 87(2)(b)	rgan refused to prov	ide his			
L.PO Marc Whirl	Abuse: P	Police Officer Marc White mber to § 87(2)(b)	rl refused to provide	his			
M.POM Phillip Bilmes	Abuse: P	Police Officer Phillip Bil Imber to § 87(2)(b)	mes refused to provi	ide his			

Officer(s)	Allegation	Investigator Recommendation
N. An officer	Off. Language: An officer made remarks to \$87(2)(b) based upon the gender of \$87(2)(b)	
O. An officer	Discourtesy: An officer spoke discourteously to §87(2)(b)	
P.POM Kevin Morgan	Abuse: Police Officer Kevin Morgan stopped §87(2)(b)	
Q.POM Kevin Morgan	Force: Police Officer Kevin Morgan used physical force against § 87(2)(6)	
R.POM Kevin Morgan	Abuse: Police Officer Kevin Morgan drew his gun.	
S.POM Kevin Morgan	Discourtesy: Police Officer Kevin Morgan spoke discourteously to \$87(2)(b)	
T.POM Kevin Morgan	Force: Police Officer Kevin Morgan used physical force against § 87(2)(b)	
U.POM Kevin Morgan	Force: Police Officer Kevin Morgan used a chokehold against § 87(2)(b)	
V.POM Kevin Morgan	Force: Police Officer Kevin Morgan restricted s breathing.	
W.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to \$87(2)(b) based upon the gender of \$87(2)(b)	
X.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to \$87(2)(b) based upon the perceived sexual orientation of \$87(2)(b)	
Y.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to \$87(2)(b) based upon race.	
Z.POM Kevin Morgan	Discourtesy: Police Officer Kevin Morgan spoke discourteously to \$87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
\$ 97/2\\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## **Case Summary**

On April 23, 2020, at approximately 12:08 a.m., street, and is connected before he could be connected to IAB. The operator relayed street, and IAB later called street, and is complaint, generating original IAB log street, and IAB received this complaint from IAB on May 4, 2020, under referral log street.
exited the Pennsylvania Avenue "3" subway station in Brooklyn and began walking east along station in Brooklyn and Marc Whirl, then assigned to the 75 <sup>th</sup> Precinct's Anti-Crime team, drove up next to him. As station walked along station PO Whirl allegation a "faggot" and a "batty boy" over the vehicle's PA system (Allegation A: Offensive Language, station B: Discourtesy, station B: Discourtesy, station B: Discourtesy, station B: Discourtesy B: PO Morgan threatened to "smack" station G: Allegation E: Abuse of Authority, station G: Discourtesy, station B: Offensive Language, station B: Discourtesy, station G: Discourtesy, station B: Offensive Language, station B: Discourtesy, station G: Discourtesy, station G: Discourtesy, station G: Discourtesy, station G: Station G: Discourtesy, s
Morgan pulled his police vehicle into the wrong lane of traffic, parked it, and exited. PO Morgan allegedly told \$57(2)(b)
The investigation obtained nearby surveillance video footage which captured a brief portion of interaction with PO Morgan after PO Morgan exited his vehicle. However, the image

quality was very poor (BR 01-03, summarized at BR 04, see Sub-clip #1 at BR 19). 887(2)(g).8

references to video evidence below refer to the time stamp in the video player, and not to any onscreen clock embedded in the footage itself.

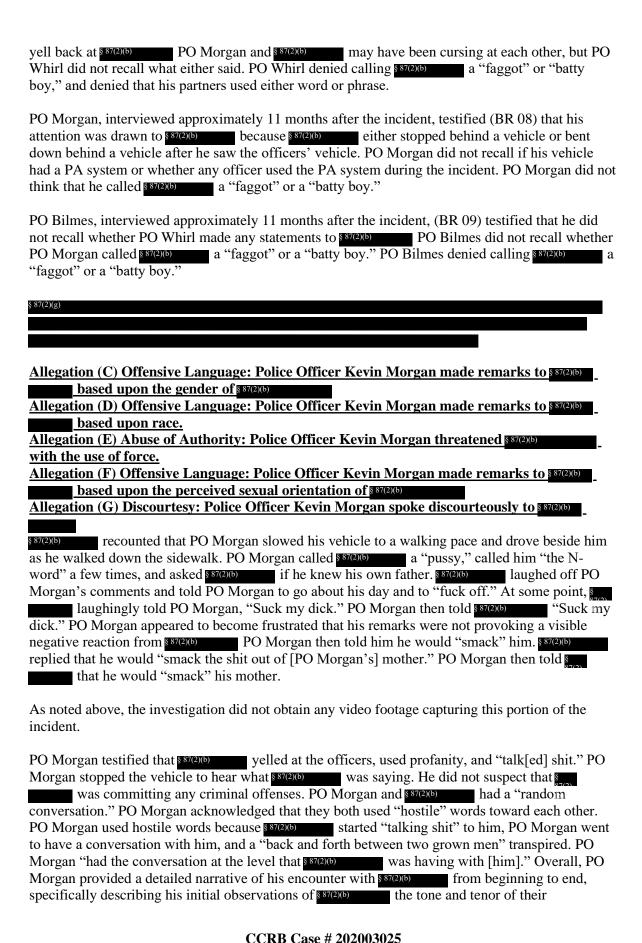
PO Whirl has since been promoted to detective. PO Morgan and PO Bilmes have since been reassigned to the 75<sup>th</sup> Precinct Detective Squad.

On September 8, 2021, this case was reassigned from Inv. Conor O'Shea to the undersigned after Inv. O'Shea's departure from the CCRB. This investigation was delayed by the COVID-19 global pandemic and delays in scheduling officers for remote interviews.

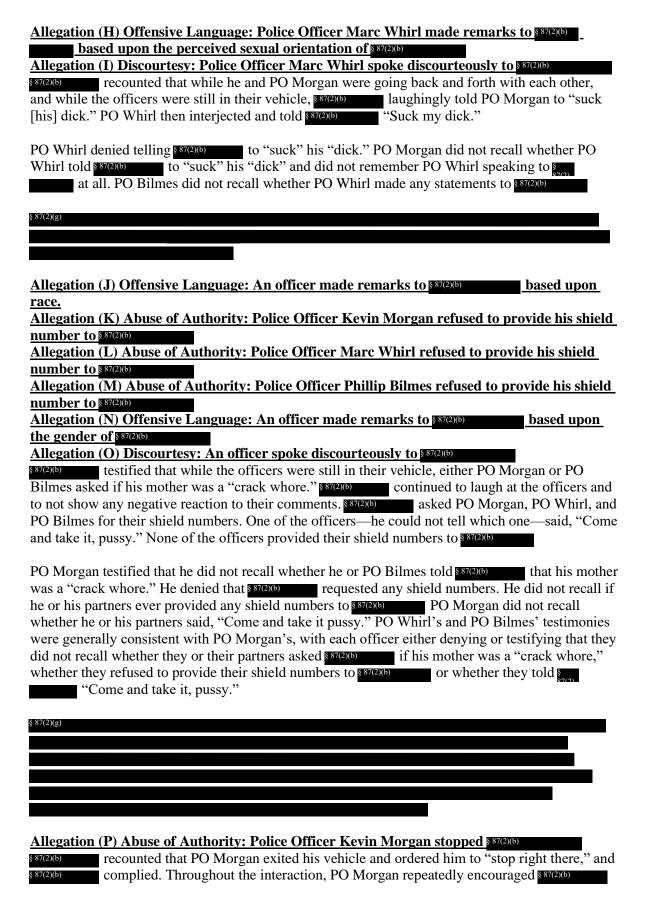
Patrol Borough Brooklyn North conducted a concurrent investigation into this incident but did not identify any subject officers and closed the physical force and stop allegations as unsubstantiated (BR 16). Their investigation focused on searching for police vehicle GPS data to identify the subject officers, but used an overly narrow time-frame for conducting that search. As a result, PO Morgan, PO Whirl, and PO Bilmes never provided any other official statements about this incident. **Findings and Recommendations** Allegation (A) Offensive Language: Police Officer Marc Whirl made remarks to \$37(2)(5) based upon the perceived sexual orientation of § 87(2)(6) Allegation (B) Discourtesy: Police Officer Marc Whirl spoke discourteously to It is undisputed that PO Morgan was driving his police vehicle, that PO Whirl was in the front passenger seat, and that PO Bilmes was in the backseat. testified (BR 05) that as he walked home along \$87(2)(b) he saw a dark gray or black Chevrolet Impala. \$87(2)(b) heard a male voice from the Impala's direction calling out "faggot" and "batty boy" [a Caribbean anti-gay term akin to "faggot"]. \$87(2)(b) realized that the Impala was a police vehicle, and that the vehicle's PA system was transmitting the "faggot" and "batty boy" comments. One of the officers was looking at \$85(2)(b) but another was looking at a Jamaican-looking man on the other side of the street. § 87(2)(b) was initially unsure of whether the officer on the PA system was speaking to him or to the Jamaican man, but later clarified that the officers seemed to be talking to the Jamaican man. The Jamaican man did not appear to be paying attention to the officers. §87(2)(b) was not able to see who was holding the PA system microphone but believed that the voice calling out "faggot" and "batty boy" was coming from PO Whirl in the front passenger seat, because PO Morgan's hand positioning in the driver's seat indicated that he was not operating the PA system. § 87(2)(b) also noted that he spoke directly to PO Morgan later in the incident and that PO Morgan's voice was noticeably different from the one he heard over the PA system. \$87(2)(b) phone statement (BR 20) was generally consistent with his CCRB interview. The investigation did not obtain any video footage capturing this portion of the incident. In the audio recording of \$87(2)(b) 911 call (BR 06, at 01:53), made immediately following the incident, § 87(2)(b) told the operator that an officer used the intercom and called him a "batty

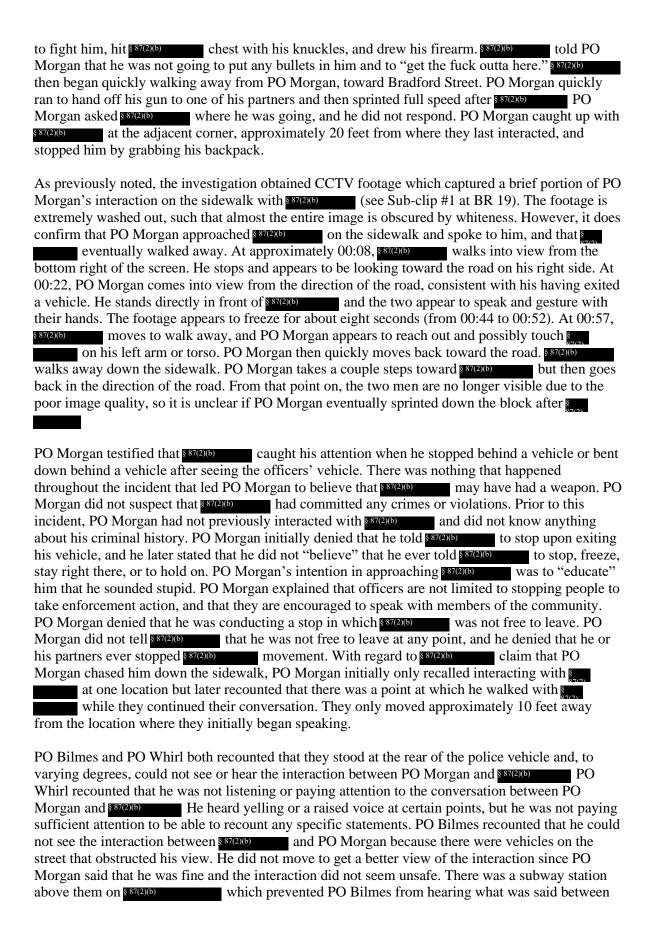
boy."

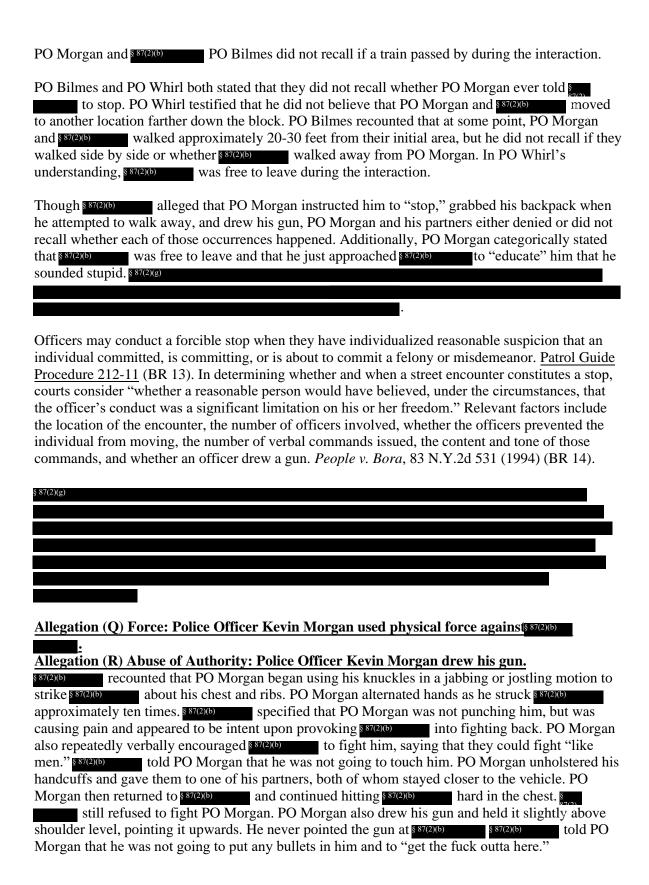
PO Whirl, interviewed approximately 11 months after the incident, testified (BR 07) that he saw walking along the sidewalk on \$87(2)(b) Nothing else about \$87(2)(b) his attention to him. §87(2)(6) then began to curse and yell at the officers. PO Morgan began to



conversation, how their conversation escalated as PO Morgan matched street," and a few specific statements that he and street, and a made. However, PO Morgan testified that he could not recall what he or street, and a made. However, PO Morgan testified that he could not recall calling street, and a "pussy" or asking him about his father. PO Morgan "did not think" that he called street, and a "niggar" or a "nigger," but he could not recall with certainty. PO Morgan also "did not think" that he told street, but again testified that he could not recall with certainty. He did not recall whether street, but again testified that he could not recall with certainty. He did not recall whether street, made any statements about any of the officers' mothers. PO Morgan did not recall telling street, him or "smack" his mother. As will be noted below (see Allegation S), PO Morgan admitted that he did use profanity with street, at a later point in the incident. street, street, and a later point in the incident.
PO Whirl testified that PO Morgan began to yell back at \$87(2)(b) after \$87(2)(b) began yelling and cursing. PO Morgan and \$87(2)(b) may have been cursing at each other, but PO Whirl did not recall what either man said. PO Bilmes did not recall if PO Morgan spoke to before he exited the police vehicle. PO Bilmes and PO Whirl both could not recall whether PO Morgan called \$87(2)(b) a "pussy" or whether PO Morgan told \$87(2)(b) "Suck my dick." PO Bilmes also could not recall if PO Morgan called \$87(2)(b) a "nigger" or a "nigga," or whether PO Morgan asked \$87(2)(b) if he knew who his father was. PO Whirl denied that PO Morgan called \$87(2)(b) if he knew who his father was. Neither PO Whirl nor PO Bilmes recalled hearing PO Morgan tell that he would "smack" him or "smack" his mother.
PO Morgan admitted to using "hostile" words with \$87(2)(b) admitted to using profanity at a later point in the incident, failed to explicitly deny making any of the alleged remarks, and crucially, even admitted it was possible that he called \$87(2)(b) a racial slur and told him to perform a sexual act. Moreover, PO Morgan was able to recall and describe the incident with a relatively high level of detail. \$87(2)(g) \$87(2)(g) \$87(4-b)
The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must "maintain a higher standard of integrity than is generally expected of others." Patrol Guide Procedure 200-02 (BR 10). Officers are prohibited from using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. Patrol Guide Procedure 203-10 (BR 11).
PO Morgan used offensive and discourteous remarks regarding \$87(2)(6) gender, race, and sexual orientation. \$87(2)(g)
At the point that PO Morgan told \$87(2)(b) that he would "smack" him and his mother, he did not suspect \$87(2)(b) of committing any crimes, he was not taking \$87(2)(b) into custody, and he did not have any need or reason to protect himself or others \$87(2)(g)

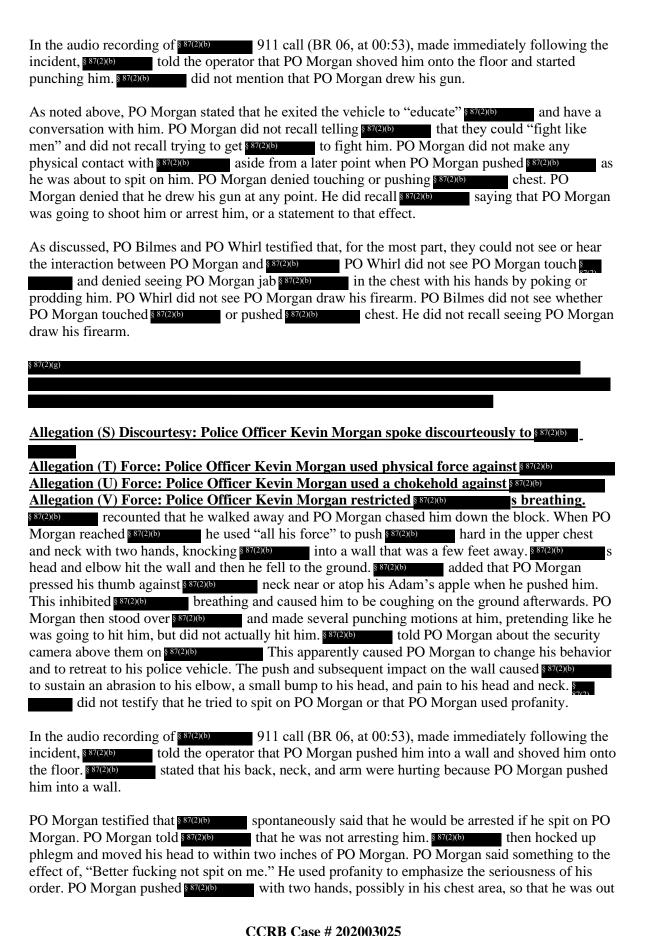


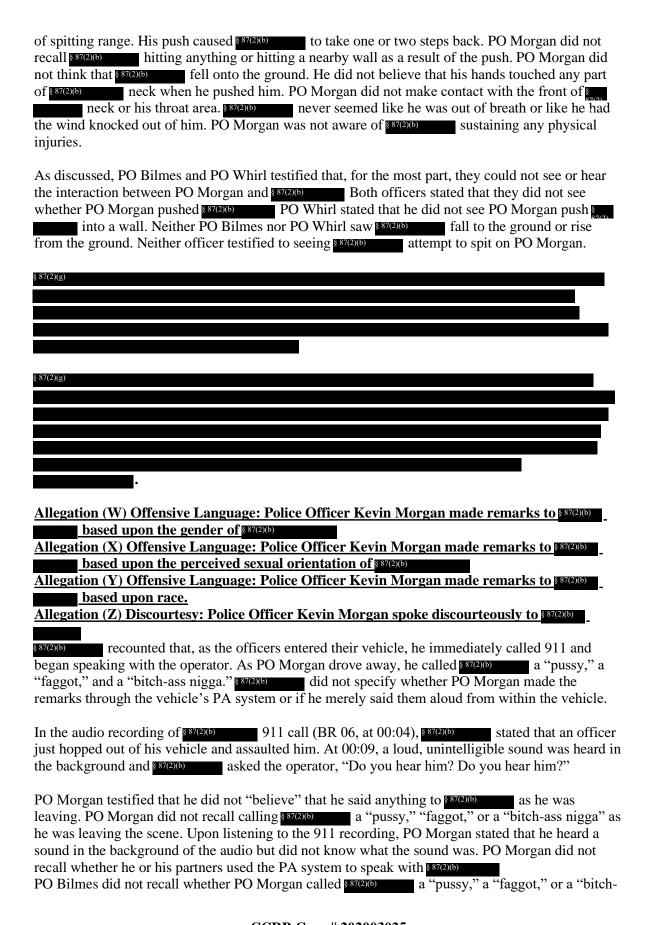




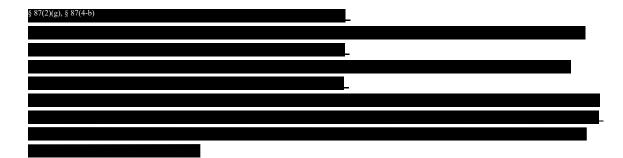
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ass nigga." PO Whirl did not recall PO Morgan calling (a "pussy." PO Whirl denied PO Morgan calling (a "faggot" and a "bitch-ass nigga." After listening to the 911 audio, PO Bilmes explained that he heard the background sound in the audio, that it could have been the vehicle's PA system, but that he could not definitively identify the sound. PO Whirl stated that the sound in the 911 audio could have been the vehicle's PA system. PO Whirl did not recall whether any officers used the PA system to speak to (a system) and did not know why the PA system was used at that point or who used it.
PO Morgan's failure to deny using such facially offensive language is striking and tends to indicate that \$87(2)(b) account of the incident was accurate. Additionally, \$87(2)(b) immediately called 911 to file a complaint and spontaneously noted to the operator that PO Morgan could be heard during the call, which is consistent with his CCRB testimony that PO Morgan made the remarks to him while he was on the phone with 911. \$87(2)(c)
The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must "maintain a higher standard of integrity than is generally expected of others." Patrol Guide Procedure 200-02 (BR 10). Officers are prohibited from using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. Patrol Guide Procedure 203-10 (BR 11).
§ 87(2)(g)  § 87(2)(g), § 87(4-b)



## Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which \$87(2)(b) has been a party (BR 15).
- PO Bilmes has been a member of the NYPD for six years, and this is the first CCRB complaint to which he has been named a subject.
- PO Morgan has been a member of the NYPD for 11 years, and has been named a subject in 16 other cases and 42 other allegations, of which four were substantiated:
  - o 201605124 involved substantiated allegations of vehicle stop and frisk against PO Morgan. The Board recommended Formalized Training and the NYPD imposed Formalized Training.
  - 201909062 involved substantiated allegations of discourtesy and failure to provide business card
    against PO Morgan. The Board recommended Charges and the NYPD has not yet imposed
    discipline. The discourtesy allegation involved PO Morgan telling a civilian that he needed
    to "educate" himself and calling him, "stupid," "uneducated," "ignorant," and, "dumb."
  - o 202001583 and 202004356 are pending investigation.
  - o PO Morgan has been the subject of five additional discourtesy allegations and two offensive language allegations:
    - In 201305937, PO Morgan allegedly told the civilian, "One of your friends tried to throw his hands up at us and he's real fucked up," which was closed as unsubstantiated.
    - In 201508611, PO Morgan allegedly told a female civilian that he could not tell that she was a woman, which was closed as unsubstantiated.
    - In 201601814, PO Morgan allegedly called the civilian a "faggot," which was closed as complainant uncooperative.
    - In 201605124, PO Morgan allegedly told the civilian that he was going to "search his nuts," which was closed as unsubstantiated.
    - In 201700909, PO Morgan allegedly told the civilian, "Oh, you passed the bar? Shut the fuck up," "You're talking all that shit," and allegedly called him a "dickhead," which was closed as unsubstantiated.
    - In 201904735, PO Morgan allegedly told the civilian, "You're probably not a real lawyer. You probably just went to John Jay or something," which was mediated.
- PO Whirl has been a member of the NYPD for 17 years and has been named a subject in 18 other cases and 36 other allegations, none of which were substantiated.
  - o Two complaints against PO Whirl (202001583 88/2)(2) remain under investigation.

## **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- As of December 22, 2020, the NYC Comptroller's Office has no record of any Notice of Claim regarding this incident (BR 17).

•	§ 87(2)(b)

Squad No.:			
Investigator:	Laura Strauss Signature	SI Laura Strauss Print Title & Name	January 28, 2022 Date
Squad Leader:	Daniel Giansante Signature	IM Daniel Giansante Print Title & Name	January 28, 2022 Date
Reviewer:	Signature	Print Title & Name	